

Introduced by Senator Hollingsworth

February 23, 2006

An act to amend Section 288 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1455, as amended, Hollingsworth. ~~Sex offenses: minors~~
Impersonating a peace officer.

Under existing law, any person who ~~willfully and lewdly commits a lewd or lascivious act upon or with the body of a child who is under 14 years of age, with the intent of arousing, appealing to, or gratifying the sexual desires of that person or the child, is guilty of a felony, punishable by imprisonment for 3, 6, or 8 years.~~ *commits the crime of impersonating a peace officer during the commission of a felony shall receive an additional one-year term of imprisonment, to be imposed consecutively to the underlying term for the felony, and in lieu of the term for the impersonation offense.*

~~This bill would make a technical, nonsubstantive change to that provision.~~

This bill would create a 5-year sentence enhancement for a person who commits the crime of impersonating a peace officer during the commission of any of several specified sex offenses, to be imposed consecutively to the term for the underlying felony, and in lieu of the term for the impersonation offense. Because the bill would create a new enhancement, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 667.17 of the Penal Code is amended to*
2 *read:*

3 667.17. (a) Any person who violates the provisions of
4 Section 538d during the commission of a felony shall receive an
5 additional one-year term of imprisonment, to be imposed
6 consecutive to the term imposed for the felony, in lieu of the
7 penalty that would have been imposed under Section 538d.

8 (b) *Notwithstanding subdivision (a), any person who violates*
9 *the provisions of Section 538d during the commission or*
10 *attempted commission of a violation of Section 207, 209, 220,*
11 *243.4, 261, 264.1, 286, 288, 288a, 288.5, or 289, shall receive an*
12 *additional five-year term of imprisonment, to be imposed*
13 *consecutive to the term imposed for the felony, in lieu of the*
14 *penalty that would have been imposed under Section 538d.*

15 SEC. 2. *No reimbursement is required by this act pursuant to*
16 *Section 6 of Article XIII B of the California Constitution because*
17 *the only costs that may be incurred by a local agency or school*
18 *district will be incurred because this act creates a new crime or*
19 *infraction, eliminates a crime or infraction, or changes the*
20 *penalty for a crime or infraction, within the meaning of Section*
21 *17556 of the Government Code, or changes the definition of a*
22 *crime within the meaning of Section 6 of Article XIII B of the*
23 *California Constitution.*

24 ~~SECTION 1. Section 288 of the Penal Code is amended to~~
25 ~~read:~~

26 ~~288. (a) Any person who willfully and lewdly commits any~~
27 ~~lewd or lascivious act, including any of the acts constituting other~~
28 ~~crimes provided for in Part 1, upon or with the body, or any part~~
29 ~~or member thereof, of a child who is under the age of 14 years,~~
30 ~~with the intent of arousing, appealing to, or gratifying the lust,~~
31 ~~passions, or sexual desires of that person or the child, is guilty of~~

1 a felony and shall be punished by imprisonment in the state
2 prison for three, six, or eight years.

3 (b) (1) Any person who commits an act described in
4 subdivision (a) by use of force, violence, duress, menace, or fear
5 of immediate and unlawful bodily injury on the victim or another
6 person, is guilty of a felony and shall be punished by
7 imprisonment in the state prison for three, six, or eight years.

8 (2) Any person who is a caretaker and commits an act
9 described in subdivision (a) upon a dependent person by use of
10 force, violence, duress, menace, or fear of immediate and
11 unlawful bodily injury on the victim or another person, with the
12 intent described in subdivision (a), is guilty of a felony and shall
13 be punished by imprisonment in the state prison for three, six, or
14 eight years.

15 (c) (1) Any person who commits an act described in
16 subdivision (a) with the intent described in that subdivision, and
17 the victim is a child of 14 or 15 years, and that person is at least
18 10 years older than the child, is guilty of a public offense and
19 shall be punished by imprisonment in the state prison for one,
20 two, or three years, or by imprisonment in a county jail for not
21 more than one year. In determining whether the person is at least
22 10 years older than the child, the difference in age shall be
23 measured from the birth date of the person to the birth date of the
24 child.

25 (2) Any person who is a caretaker and commits an act
26 described in subdivision (a) upon a dependent person, with the
27 intent described in subdivision (a), is guilty of a public offense
28 and shall be punished by imprisonment in the state prison for
29 one, two, or three years, or by imprisonment in a county jail for
30 not more than one year.

31 (d) In any arrest or prosecution under this section or Section
32 288.5, the peace officer, district attorney, and the court shall
33 consider the needs of the child victim or dependent person and
34 shall do whatever is necessary, within existing budgetary
35 resources, and constitutionally permissible to prevent
36 psychological harm to the child victim or to prevent
37 psychological harm to the dependent person victim resulting
38 from participation in the court process.

39 (e) Upon the conviction of any person for a violation of
40 subdivision (a) or (b), the court may order, in addition to any

1 other penalty or fine imposed, the defendant to pay an additional
2 fine not to exceed ten thousand dollars (\$10,000). In setting the
3 amount of the fine, the court shall consider any relevant factors,
4 including, but not limited to, the seriousness and gravity of the
5 offense, the circumstances of its commission, whether the
6 defendant derived any economic gain as a result of the crime, and
7 the extent to which the victim suffered economic losses as a
8 result of the crime. Every fine imposed and collected under this
9 section shall be deposited in the Victim-Witness Assistance Fund
10 to be available for appropriation to fund child sexual exploitation
11 and child sexual abuse victim counseling centers and prevention
12 programs pursuant to Section 13837.

13 If the court orders a fine imposed pursuant to this subdivision,
14 the actual administrative cost of collecting that fine, not to
15 exceed 2 percent of the total amount paid, may be paid into the
16 general fund of the county treasury for the use and benefit of the
17 county.

18 (f) For purposes of paragraph (2) of subdivision (b) and
19 paragraph (2) of subdivision (c), the following definitions apply:

20 (1) "Caretaker" means an owner, operator, administrator,
21 employee, independent contractor, agent, or volunteer of any of
22 the following public or private facilities when the facilities
23 provide care for elder or dependent persons:

24 (A) Twenty-four hour health facilities, as defined in Sections
25 1250, 1250.2, and 1250.3 of the Health and Safety Code.

26 (B) Clinics.

27 (C) Home health agencies.

28 (D) Adult day health care centers.

29 (E) Secondary schools that serve dependent persons and
30 postsecondary educational institutions that serve dependent
31 persons or elders.

32 (F) Sheltered workshops.

33 (G) Camps.

34 (H) Community care facilities, as defined by Section 1402 of
35 the Health and Safety Code, and residential care facilities for the
36 elderly, as defined in Section 1569.2 of the Health and Safety
37 Code.

38 (I) Respite care facilities.

39 (J) Foster homes.

~~(K) Regional centers for persons with developmental disabilities.~~

~~(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.~~

~~(M) An agency that supplies in-home supportive services.~~

~~(N) Board and care facilities.~~

~~(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent persons, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.~~

~~(P) Private residences.~~

~~(2) “Board and care facilities” means licensed or unlicensed facilities that provide assistance with one or more of the following activities:~~

~~(A) Bathing.~~

~~(B) Dressing.~~

~~(C) Grooming.~~

~~(D) Medication storage.~~

~~(E) Medical dispensation.~~

~~(F) Money management.~~

~~(3) “Dependent person” means any person who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. “Dependent person” includes any person who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.~~

~~(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).~~

~~(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or~~

- 1 ~~who is in an equivalent domestic relationship with, the dependent~~
- 2 ~~person under care.~~

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